

will make every effort to conduct its investigation in a way to maintain confidentiality. If OPM is unable to obtain sufficient information to render a decision and preserve the requested confidentiality, OPM will notify the claimant that the claim will be cancelled with no further action by OPM unless the claimant voluntarily provides written authorization for his or her name to be revealed.

(b) *Agency.* (1) In *FLSA exemption status determination claims*, the burden of proof rests with the agency that asserts the FLSA exemption.

(2) The agency must provide the claimant with a written acknowledgment of the date the claim was received.

(3) Upon a claimant's request, and subject to any Privacy Act requirements, an agency must provide a claimant with information relevant to the claim.

(4) The agency must provide any information requested by OPM within 15 workdays after the date of the request, unless the agency requests additional time and OPM grants a longer period of time in which to provide the requested information.

§ 551.707 Withdrawal or cancellation of an FLSA claim.

(a) *Withdrawal.* OPM may grant a request from the claimant or claimant's representative to withdraw an FLSA claim at any time before OPM issues its decision. The claimant or the claimant's representative must submit the request in writing to OPM.

(b) *Cancellation.* OPM may, at its discretion, cancel an FLSA claim if the claimant or the claimant's representative fails to provide requested information within 15 workdays after the date of the request, unless the claimant or the claimant's representative requests additional time and OPM grants a longer period of time in which to provide the requested information. OPM may, at its discretion, reconsider a cancelled claim on a showing that circumstances beyond the claimant's control prevented pursuit of the claim.

§ 551.708 Finality and effect of OPM FLSA claim decision.

(a) OPM will send an FLSA claim decision to the claimant or the claimant's representative and the agency. An FLSA claim decision made by OPM is final. There is no further right of administrative appeal. However, at its discretion, OPM may reconsider its FLSA claim decision when material information was not considered or there was a material error of law, regulation, or fact in the original decision. The request must be submitted in writing and received by OPM within 45 calendar days after the date of the decision. At its unreviewable discretion, OPM may waive the time limit.

(b) A decision by OPM under the Act is binding on all administrative, certifying, payroll, disbursing, and accounting officials of agencies for which OPM administers the Act.

(c)(1) Upon receipt of a decision, the agency employing the claimant during the claim period must take all necessary steps to comply with the decision, including adherence to compliance instructions provided with the decision. All compliance actions must be completed within the time specified in the decision, unless an extension of time is requested by the agency and granted by OPM.

(2) The agency should identify all similarly situated current and former employees to ensure that they are treated in a manner consistent with the decision on FLSA coverage, informing them in writing of their right to file an FLSA claim with the agency or OPM.

§ 551.709 Availability of information.

(a) Except when the claimant has requested confidentiality, the agency and the claimant must provide to each other a copy of all information submitted with respect to the claim.

(b) When a claimant has not requested confidentiality, OPM will disclose to the parties concerned the information contained in an FLSA claim file. When a claimant has requested confidentiality, OPM will delete any information identifying the claimant before disclosing the information in an

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FLSA claim file to the parties concerned. For the purposes of this subpart, “the parties concerned” means the claimant, any representative designated in writing, and any representative of the agency or OPM involved in the proceeding.

(c) Except when the claimant has requested confidentiality or the disclosure would constitute a clearly unwarranted invasion of personal privacy, OPM, upon a request which identifies the individual from whose file the information is sought, will disclose the following information from a claim file to a member of the public:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The remedy sought;

(3) The status of the claim;

(4) The decision on the claim; and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

§ 551.710 Where to file an FLSA claim with OPM.

An FLSA claim must be filed with the OPM Classification Appeals and FLSA Program, 1900 E Street, NW., Washington, DC 20415-0001.

PART 553—REEMPLOYMENT OF CIVILIAN RETIREES TO MEET EXCEPTIONAL EMPLOYMENT NEEDS

Subpart A—General Provisions

Sec.

553.101 Applicability.

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Subpart B—Special Provisions for Reemployment Without Penalty To Meet Exceptional Recruiting or Retention Needs

553.201 Requesting OPM approval for reemployment without reduction or termination of annuity in individual cases.

553.202 Request for delegation of authority to approve reemployment without reduction or termination of annuity in emergencies or other unusual circumstances.

553.203 Status of individuals serving without reduction.

AUTHORITY: 5 U.S.C. 8344, 8468, Sec. 651, Pub. L. 106-65 (113 STAT. 664).

5 CFR Ch. I (1-1-09 Edition)

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Subpart A—General Provisions

§ 553.101 Applicability.

This part applies to employment of civilian annuitants who would be subject to termination of annuity or annuity offset under 5 U.S.C. 8344 or 5 U.S.C. 8468. Agencies may request exceptions as provided in subpart B of this part from the reemployed annuitant provisions of 5 U.S.C. 8344 (for Civil Service Retirement System annuitants) or 8468 (for Federal Employees’ Retirement System annuitants), as appropriate.

[65 FR 19644, Apr. 12, 2000]

§ 553.102 Definitions.

(a) *Agency*, as used in this part, means an executive agency as defined in 5 U.S.C. 105.

(b) *Annuitant*, as used in this part, refers to a current or former civilian employee who is receiving, or meets the legal requirements and is applying or has announced intention to apply for, an annuity under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, based on his or her service.

(c) *Retiree*, as used in this part refers to an annuitant as defined in paragraph (b) of this section.

[56 FR 6206, Feb. 14, 1991, as amended at 65 FR 19644, Apr. 12, 2000]

§ 553.103 General policy.

(a) *Agency discretion and responsibility*. The decision to request an exception, or to grant an exception under delegated authority, for any individual under any of the provisions of this part will be at the discretion of the employing agency. A determination made in connection with one position does not require a like determination in connection with any other position. In deciding whether to request an exception or grant an exception under delegated authority, each agency is expected to weigh fiscal responsibility and employee equity and should consider such factors as availability of funds as well as the criteria set out in this part.

(b) *Application of exceptions*. An exception to the salary offset provisions of 5